



Electric Power Supply  
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May 9, 1997

The Honorable John D. Dingell  
Ranking Member  
House Committee on Commerce  
564 Ford House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Dingell:

The Electric Power Supply Association (EPSA) is pleased to submit the enclosed responses to your April 10 letter which asked several questions about electric industry restructuring.

EPSA thanks you for the opportunity to express our views about the importance of passing comprehensive federal legislation with a date certain so America's electricity consumers can enjoy both the right to choose their power supplier and the benefits of competition as soon as possible.

As your Committee examines the complex issues of electric industry restructuring, we hope that you will continue to use EPSA as a resource.

If you or your staff have any questions regarding the enclosed answers, please do not hesitate to contact me or members of the EPSA staff.

Sincerely,

A handwritten signature in cursive script that reads "Lynne H. Church".  
Lynne H. Church  
Executive Director

Attachments

1. In view of the rapid pace at which states are proceeding in considering and, in some cases, adopting retail competition, do you believe federal legislation is necessary, and if so why?

**The Electric Power Supply Association strongly believes that comprehensive federal legislation with a date certain when all classes of customers will be able to choose their electric power supplier is necessary and should be passed as soon as possible.**

**There are several problems with the state-by-state approach to restructuring and the wording of question one highlights some of those problems. First, EPSA disagrees with the notion that states are rapidly proceeding to competition. While a handful of states have moved at a “rapid” pace, according to EPSA’s analysis, 19 states are simply studying the issue and five states are doing nothing at all (see EPSA’s attached state-by-state restructuring matrix). This is not a consistently “rapid” pace.**

**The result of a state-by-state approach is likely to be a “crazy quilt” of vastly different, and potentially incompatible, programs which range from aggressive, full competition to none at all. While states like California, Pennsylvania, New Hampshire and others have initiated exciting competitive programs, there are many states that are doing nothing or very little. In addition, while some states do have restructuring bills pending, there is no guarantee that they will pass. In other states, pilot programs are being implemented not as part of restructuring efforts, but as an attempt to relieve the pro-competitive pressures being exerted by larger customers. Finally, even when states have completed their restructuring efforts, litigation is likely to delay or stymie implementation efforts.**

**Second, the fact that only “some,” and not all states, have adopted competitive programs is a strong reason for federal legislation. With the development of economy energy transactions in the early 1970s and more recently in the wake of EPAct, electric markets are increasingly *regional and even national in scope*. Efficient competitive markets require a consistent legal and regulatory framework. As electricity increasingly becomes a commodity traded regionally and nationally, the traditional state-by-state approach to regulation simply becomes outmoded. Fully competitive, consistent and efficient electricity markets can only be achieved by federal legislation which establishes guidelines for states to follow as they design their competitive programs. Allowing a state-by-state approach to restructuring, as many are advocating, creates more problems than it solves and has the potential to bring chaos to an industry that demands certainty and consistency.**

**For the above reasons, it is imperative that Congress act sooner, rather than later, to bring order to the restructuring effort. The longer Congress waits to establish national competitive standards to guide the states, the more likely it is**

**that states choosing to enact programs requiring full retail access will do so in an inconsistent fashion. If Congress chooses not to act now, it most likely will have to act later to clean up the pieces.**

**In addition, only Congress can clarify state and federal jurisdictional authority, make necessary modifications to the Federal Power Act, set national standards for competition and minimize the turmoil and upheaval accompanying change in the electric power industry.**

**2. What effect would federal legislation mandating retail competition have on various customer classes?**

**The most important effect of federal legislation would be to ensure that all classes of consumers enjoy the benefits of competition at the same time. Currently, and under the state-by-state approach to restructuring, large consumers are able to lower their costs through a variety of ways, while small consumers cannot. Factories or companies that consume large quantities of power can 1) negotiate with their supplier, 2) self generate, or 3) threaten to leave the system to reduce their electricity costs. America's homeowners, on the other hand, never have and never will have the clout needed to get the best deals without full competition. Federal legislation will guarantee benefits for *all* users of electricity, especially the smaller users. Some argue that "the big dogs will eat first" in a restructured industry. In reality, the big dogs are eating now and will continue to do so while the small dogs are unfairly being left out. Federal legislation will finally let the small dogs get to the bowl to get something to eat.**

**Another important effect of retail competition will be to empower all consumers. Consumers will now have something they have never been able to enjoy: the option of choosing whichever supplier of electricity they want. All classes of consumers, by having the power to choose their provider, should see more responsive and customer-oriented behavior from power suppliers. Consumers, no matter how large or small, will be *customers, not ratepayers*, in a restructured world. Competition is not a zero sum game. Rather, as it has in other deregulated industries, competition will allow all classes of consumers to enjoy lower prices, better services, increased efficiencies, new technologies and enhanced reliability.**

**3. If Congress were to enact retail competition legislation, what recommendations do you have with respect to the following issues? Please indicate how your recommended course of action would affect consumers.**

**a. Stranded Investment; EPSC supports recovery of all legitimate, verifiable, prudently-incurred and non-mitigatable net stranded costs, including existing investments, regulatory commitments and contractual obligations. At the wholesale level, EPSC does not oppose FERC's assignment of exit fees**

**per Order No. 888 to recover stranded costs. At the retail level, where the majority of stranded costs are, EPSA supports a broad-based, nonbypassable customer-level access charge to pay for the recovery of stranded costs. Retail stranded costs should be identified within one year of enactment of a law providing for a date certain for customer choice and should be recovered over a defined period of time as determined by each state.**

**While stranded cost recovery may mask some of the immediate benefits of competition, stranded costs must be resolved as a transition issue. Properly calculated, stranded costs reflect commitments and investments already made and largely already included in rates.**

**b. Reciprocity; EPSA does not believe that reciprocity is an effective “Plan B” to federal legislation setting a date for full retail competition. The goal of reciprocity is to assure utilities in competitive states that utilities in neighboring states are not afforded the opportunity to compete in an open market without first allowing access to their own lines and customers.**

**There are serious questions about how reciprocity could be implemented. For example, what criteria, and established by whom, would be used to determine if reciprocity should be granted? Could the PUC in state A require the PUC in state B to adopt an identical restructuring plan in order for reciprocity to be satisfied?**

**In addition, there is a legal question as to whether state-imposed reciprocity requirements are consistent with the Commerce Clause.**

**c. Unbundling local distribution company services; While some of the local distribution services, such as wires services, will remain a natural monopoly operation in a restructured market, other aspects of local distribution may be opened to competition by the states. For example, functions such as metering, billing and other energy related services could be opened to competition by a particular state. Unbundling and transparency will also allow customers to see exactly what they are paying for in their electric bills. Separately stated generation, transmission and distribution charges, as well as taxes and surcharges, should be included in customers’ bills.**

**d. Environmental issues; The new era of competitive electric power markets can continue to improve environmental quality nationwide and still minimize costs to consumers. Competitive power suppliers have provided affordable electricity while pioneering and implementing a commitment to environmental excellence and technological innovation.**

**Environmental issues are properly part of the restructuring debate. In the new competitive marketplace, market participants will compete on the basis of operating efficiency, innovation, performance and, of course, price. While regulatory requirements can vary over time, disparate environmental regulatory**

**requirements should not be a substantial factor in determining which plants sell electricity successfully. A comprehensive framework should not give any source a disproportionate right to pollute.**

**Today, many older power plants have been allowed to pollute at significantly higher levels than comparably fueled modern plants. A restructured, competitive marketplace should not allow any power plant a pricing edge simply because it has largely avoided pollution controls. This would not be fair to clean power producers or to the general public. Congress must explore how existing legal authority under environmental statutes can be used to remedy these concerns or whether new legislation will be required. Environmental excellence is an appropriate and necessary goal for all participants in a competitive power marketplace.**

4. If you favor federal legislation to encourage retail competition, what recommendations do you have to avoid simply substituting one patchwork quilt of varying state programs with another? Should any resulting litigation be considered in state courts or the federal courts, and why?

**To avoid replacing one patchwork system with another, Congress should establish minimum federal guidelines (see answer to question 5 below) for the states to follow when implementing retail choice. These guidelines will ensure the required consistency needed to establish workable, competitive energy markets. Federal legislation is the proper vehicle for dealing with the major issues of restructuring. Other issues, however, like the mechanics of stranded cost recovery, public purpose programs, renewables programs and resource diversity do not need the same consistency. A “patchwork” result to some of these issues is not inappropriate and grants more leeway to the states with issues they are better equipped to resolve.**

**With regard to litigation, jurisdiction should reside in both state and federal court, with state decisions jurisdictional, at least initially, to the state courts and federal regulatory decisions appealable in federal court.**

5. If Congress were to enact legislation, what direction or guidelines do you think it should provide to states? To what extent can Congress tell states how to fashion individual retail competition programs without raising constitutional concerns?

***Federal legislation should focus on ensuring workable competitive electricity markets, while allowing state options for the implementation of competition. Federal legislation, which will negate the concern of a patchwork quilt approach to restructuring, should:***

- **Have a “date certain” by when competition will exist for *all* consumers**

- **Provide for the full recovery of all legitimate and verifiable stranded costs, including regulatory commitments and power purchase contracts**
- **Provide safeguards against the abuse of market power and anti-competitive behavior**
- **Eliminate barriers to entry into the competitive market, including the repeal of state “certificate of public convenience and necessity” requirements, state and federal regulation of generation rates and other corporate regulation, and exclusive franchise service areas**
- **Allow non-discriminatory access to all transmission and distribution facilities**
- **Create competitive procurement of power and appropriate ancillary services**
- **Establish provisions for the formation of independent system operators (ISOs) to control the transmission system**
- **Prospectively repeal PUHCA and the mandatory purchase requirements of PURPA**

**With regard to the second part of the question, a federal mandate with minimum competitive guidelines would be constitutional. Please see an attached memo concerning the 10<sup>th</sup> Amendment that was prepared by EPSA for the Senate Energy & Natural Resources Committee.**